



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The International Association of Fire Fighters
File: B-224324
Date: January 16, 1987

DIGEST

1. Determination of whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion. Allegation that agency's decision to exclude protester was unreasonable is denied where agency's technical evaluation and determination that proposal was technically unacceptable had a reasonable basis.

2. Protest, filed after closing date for receipt of offers, that solicitation contained statement which impliedly excluded protester from competition is untimely since it is a protest of an alleged solicitation deficiency. Under GAO's Bid Protest Regulations such a protest must be filed before closing date.

DECISION

The International Association of Fire Fighters (IAFF) protests the rejection of its proposal under request for proposals (RFP) EMW-86-R-2280 issued by the Federal Emergency Management Agency (FEMA). The RFP called for the preparation of a publication entitled "Manual: Use of Drugs by Fire Department Members." The IAFF's proposal was determined to be outside the competitive range.

The protest is denied in part and dismissed in part.

The solicitation, issued on July 3, 1986, established as the date of closing August 4, 1986. Following evaluation of offers, FEMA formally notified IAFF by letter dated August 26, that its proposal had been evaluated "in accordance with the Federal Acquisition Regulation and the evaluation factors set forth in the RFP." The agency further stated:

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" . . . your proposal has been determined to be outside the competitive range due to technical factors. It is our opinion that even with extensive modification, your proposal would not have a reasonable opportunity for selection. Therefore, it has been removed from further consideration. . . ."

The IAFF initially protested to FEMA the rejection of its proposal and requested that the agency immediately provide it a debriefing of the reasons why its proposal was rejected, stating that without additional information it was unable to "set forth the bases for its protest . . ." of the proposal rejection.

It appears, however, that before FEMA issued a formal response to the IAFF's agency protest,^{1/} IAFF protested the matter to our Office, contending that FEMA violated the provisions of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.1001(b)(1), in that it provided insufficient information concerning the reasons why IAFF's proposal was rejected. The protester also argues that under the provisions of FAR, 48 C.F.R. § 15.1002, it is entitled to a pre-award debriefing on the reasons its proposal was rejected. IAFF further alleges that "it is now evident . . . from the face of the RFP" that the agency violated federal procurement principles prohibiting preselection by including provisions in the solicitation which, in effect, precluded it from the competition.

Much of IAFF's protest is an expression of frustration at the fact that the agency advised the protester only that its proposal was excluded from the competitive range "due to technical factors." As we indicated above, the protester is of the opinion that not only is this an inadequately detailed notice under FAR, 48 C.F.R. § 15.1001(b)(1), but that the protester is entitled to a full debriefing prior to award. Although the protest, and the agency's response, have focused on these questions, the fact remains that the procurement action of which the protester complains is the rejection of its proposal, and it is the propriety of that action which it is our function to review pursuant to our Bid Protest Procedures.

^{1/} The record shows that both before and after IAFF protested to the contracting agency, FEMA informally advised the protester that a debriefing would be provided following award of the contract.

In view of the limited information disclosed to the protester by the agency in this preaward, negotiated contract situation, our discussion here must be general as to the technical proposals and the agency's technical evaluation. We have, however, examined the record in camera to determine whether the agency's actions had a reasonable basis. We conclude that they did.

This solicitation was for the development of a manual on drug abuse for use by fire department personnel, to serve as an aid in the identification of fire department members with such problems and to suggest positive, proven intervention strategies to minimize the effects of drug abuse. Issues to be addressed by the manual, according to the RFP, would include the economic impact of drug abuse; the role of unions; the potential legal liability of fire departments whose members commit negligent acts while on duty and under the influence of drugs; methods of recognizing the existence of a problem, with emphasis on a supervisor's role; whether a user should be considered as a "moral miscreant" or as a "patient;" family involvement; and treatment protocols.

The RFP advised offerors that the award of a cost-plus-fixed-fee contract was contemplated and that technical criteria were considered of "greater importance" than cost, although cost may be the deciding factor when proposals are ranked technically equal. In addition to cost proposals, offerors were to submit technical proposals, the general content of which was discussed in the RFP and which, offerors were advised, would be evaluated under the following factors:

1. Understanding of the Program Requirement 10 points
2. Project Organization and Management; 45 points
 - a. Demonstration of ability to accomplish types of work represented, on schedule (15 points)
 - b. Ability to commit qualified staff to the project (10 points)

c. Demonstration of management capability: successful management of similar projects (10 points)

d. Demonstration of ability to compile, write, edit and produce technical and contractual requirements in a timely manner (10 points)

3. Experience and Qualifications of Key Staff 35 points

4. Facilities and Equipment 10 points

Total 100 points

The proposals received were forwarded to a Technical Evaluation Panel for review based on the evaluation factors set forth in the RFP. The panel rated the IAFF's proposal as technically unacceptable and it subsequently was determined to be outside the competitive range. Although the panel identified deficiencies in the IAFF's proposal with respect to all four major evaluation factors, and lowered its point ratings accordingly, the most significant downgrading of the protester's technical proposal concerned factors 2 and 3.

With regard to factor 2, project organization and management, subfactor a, ability to accomplish the type of work represented and the timeliness thereof, the panel was of the opinion that the IAFF's proposal to conduct an opinion survey among the 100 largest fire departments would require Office of Management and Budget approval, be very time consuming and, because of the covert nature of drug abuse, fail to produce useful and accurate data. In addition, no plan was presented to involve volunteer fire service members, which constitute a majority of such personnel, as opposed to paid members. The panel therefore felt strongly that the plan presented could not be executed in the time required and the results would be skewed toward large paid fire departments.

The panel also had reservations about the qualifications of the IAFF staff for this project (subfactor b) because the experience of the principal staff was in the development of hardware for fire fighter protection rather than in programs involving behavior modifications.

Similar concerns were expressed in relation to subfactor c, successful management of similar projects, because the IAFF's past work had been in the technical area of hardware development and not one involving behavior modification management, fire department policy and economics.

The panel also downgraded the IAFF's proposal under subfactor d, demonstration of ability to compile, write, edit and produce the technical and contractual requirements in a timely manner, because the panel thought the survey effort alone might require a calendar year.

As for factor 3, experience and qualifications of key personnel, the panel reduced the IAFF's rating because its key staff's experience was in the area of hardware development and evaluation which require a different range of skills than those needed to attack departmental drug abuse, and because the panel saw limited utility in the heavy emphasis in the proposal upon conducting legal research on issues related to drug use, such research to be performed by the law firm representing the IAFF as its General Counsel, which firm also would be the principal consultant retained by the IAFF for performance under the contract.

The major, although not exclusive, reasons for the panel's conclusion that the IAFF's proposal was technically unacceptable therefore appear to have been that it proposed to conduct a time-consuming survey of doubtful usefulness which would jeopardize its ability to complete the project on time; that the experience of the organization and its key staff was in the development of protective devices for fire fighters rather than in behavioral modification areas such as drug abuse; and because of the proposal's heavy emphasis on legal research at the expense of other areas.

In reviewing protests concerning the evaluation of proposals and competitive range determinations, our function is not to reevaluate the proposal and make our own determination about its merits. This is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. Robert Wehrli, B-216789, Jan. 16, 1985, 85-1 C.P.D. ¶ 43. Procuring officials have a reasonable degree of discretion in evaluating proposals, and we will examine the agency's evaluation only to ensure that it had a reasonable basis. RCA Service Co. et al., B-218191 et al., May 22, 1985, 85-1 C.P.D. ¶ 585. Furthermore, it is well

established that the determination of whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion which will not be disturbed unless it is shown to be unreasonable or in violation of procurement laws or regulations, Metric Sys. Corp., B-218275, June 13, 1985, 85-1 C.P.D. ¶ 682. Additionally, the fact that a protester does not agree with an agency's evaluation does not render the evaluation unreasonable or contrary to law. Logistic Services International, Inc., B-218570, Aug. 15, 1985, 85-2 C.P.D. ¶ 173.

We recognize that the protester has not had an opportunity to address the technical evaluation panel's criticisms of its proposal because this information has not previously been disclosed to it. The protester does speculate that its proposal was given "minimal consideration" at best and may even have been doomed to rejection from the outset as a result of the agency's "preselection" of another offeror.

The record contains no support for the protester's assertion that its proposal received "minimal" consideration. It was reviewed and point-scored by each member of the technical evaluation panel, whose members arrived at a consensus as to the rating of every proposal. It does not appear that the IAFF's proposal was treated any differently than all the others. Moreover, we are unable to conclude from a reading of that proposal, the solicitation provisions and the evaluation documents, that the exclusion of the protester's proposal from the competitive range had no reasonable basis.

Finally, we find untimely IAFF's allegation that certain language in the RFP "implies" that FEMA intended to exclude the IAFF from the competition prior to the evaluation of offers and, thus, engaged in "preselection" of offerors. Specifically, the protester refers to a statement in part I, section C of the RFP (Descriptions/Specifications/Work statement) that, "the Contractor shall obtain data for this effort [development of a manual on drug abuse by fire department personnel] from fire service organizations, such as the International Association of Fire Fighters, the International Association of Fire Chiefs, and the National Fire Protection Association." The IAFF argues that the fact that it is named as one resource for "the Contractor" raises the possibility that FEMA did not intend for the IAFF itself to be the contractor. The protester contends that the implication of this statement in the RFP was not apparent to it until it was notified of the rejection of its proposal.

Aside from the fact that the statement does not, as alleged, preclude consideration of a proposal from the IAFF, our Bid Protest Regulations require that protests based upon alleged solicitation improprieties which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to the closing date. 4 C.F.R. § 21.2(a)(1) (1986). Here, where the IAFF protests its "implied" exclusion from competition based on a statement in the RFP as initially issued, the protest basis is dismissed as untimely. 4 C.F.R. § 21.3(f)(7).

for Seymour Efron
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